No. 14502

United States
Court of Appeals
for the Ninth Circuit.

BUTCHERS UNION LOCAL No. 563, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor,

Appellant,

vs.

COMMERCIAL PACKING COMPANY, INC.,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

FILED
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PAUL P. O'BRIEN,
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-10-54

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Appeal from the United States District Court for the Southern District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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In the District Court of the United States, Southern District of California, Central Division

No. 16818 T

COMMERCIAL PACKING CO., INC.,

Plaintiff,

vs.

BUTCHERS UNION LOCAL No. 563, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor,

Defendant.

COMPLAINT FOR DAMAGES

The plaintiff Commercial Packing Co., Inc., complains of the defendant and for a cause of action alleges as follows:

I.

This cause of action arises under the laws of the United States regulating commerce and more particularly under Section 301 of the Labor-Management Relations Act, 1947, known as Public Law No. 101, 80th Congress of the United States, Chapter 120, and amended by Public Law No. 189, 82nd Congress, and commonly referred to as the Taft-Hartley Act.

II.

Plaintiff has been at all times hereinmentioned and is now a California corporation organized and

doing business under any by virtue of the laws of the State of California, with its principal [2*] office in the County of Los Angeles.

III.

Plaintiff buy and raises cattle and hogs of all types and slaughters, processes, packages and after slaughtered and processed or packaged sells them. A substantial portion of such purchases and sales are made in commerce within the meaning of the Taft-Hartley Act. Plaintiff annually ships to points outside the State of California said merchandise with a value in excess of $1,000,000.00 and imports annually from states outside the State of California said merchandise with a value in excess of $1,000,-000.00.

IV.

The defendant was at all times hereinmentioned and is now a voluntary labor organization composed of many persons who are associated together to transact the business generally transacted by a labor organization as that term is generally known under the Taft-Hartley Act; and was at all times hereinmentioned and is now chartered by and affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, a national labor organization, which in turn is affiliated with American Federation of Labor, a national labor organization.

V.

Plaintiff was at all times hereinmentioned and is

*Page numbering appearing at foot of page of original Certified Transcript of Record.

now a member in good standing of Meat Packers, Incorporated, a California corporation, with its principal office located in the County of Los Angeles, State of California. Said corporation is a membership corporation composed of various meat packers doing the same or similar type of business as plaintiff within a general area within the County of Los Angeles, State of California. Said corporation has been at all times hereinmentioned and is now the authorized agent and representative of the plaintiff for the purpose of negotiating and executing collective bargaining agreements with various labor organizations, including the defendant, covering wages, hours [3] and other working conditions of the plaintiff's employees, excluding executive, administrative, professional and non-production-working supervisory employees. Any and all collective bargaining agreements executed by said Meat Packers, Incorporated, are made for this plaintiff as the real party in interest and for the direct benefit of the plaintiff and for the purpose of obligating the plaintiff to the various covenants, terms and conditions contained therein.

VI.

Pursuant to the authority and agency described in the preceding paragraph of this complaint, on or about March 1, 1951, the plaintiff acting through said Meat Packers, Incorporated, entered into that certain written collective bargaining agreement with the defendant covering wages, hours and working conditions of the plaintiff's production employees,

but excluding operating engineers, teamsters, office and clerical workers, non-working foremen and supervisory employees in performing duties covered by said agreement. Under the terms of said Agreement and particularly Article XVI thereof, said agreement was at all times hereinmentioned, is now, and will until March 1, 1956, remain in effect. Under the further terms of said agreement either party could open said agreement annually for negotiations of weekly rates of pay and hours only by giving notice as required in said Agreement not less than 60 days prior to March 1, of any year. Pursuant to such reopening adjustments on wages of employees covered by said agreement were made on or about March 1, 1952; March 1, 1953, and March 1, 1954. There is attached hereto marked Exhibit A and by this reference made a part hereof with the same force and effect as though fully set forth hereat a true and correct copy of said agreement. Commencing at page 8a thereof there is set forth the weekly rates of pay for each of the classifications covered by said agreement for the years from and including 1951 through 1954. The plaintiff has been at all times hereinmentioned and is now observing and performing without [4] default all of the covenants, terms and conditions required of it as employer under Exhibit A.

VII.

Although said rates are listed as weekly they are based on a 40-hour week, and the hourly rate for all purposes is determined by dividing 40 into the weekly rate. On or about January 31, 1952, the de-

fendant, through its duly authorized agents acting during the course and within the scope of their employment for and on behalf of the defendant, without any cause or provocation whatsoever, without any reduction of pay having been instituted or threatened to be instituted, and without the permission or consent of the plaintiff or said Meat Packers, Incorporated, caused meetings and conferences to be held by said agents with, and directions and instructions to be issued from said agents to, its various union stewards and members employed by plaintiff as the direct and natural result of which the rate of production by said employees was arbitrarily reduced from the rate of production generally prevailing in the plant of the plaintiff for many months immediately prior to January 31, 1952. This arbitrary reduction has been known by the defendants, its agents and the plaintiff-employer and is hereafter referred to as "controlled kill." The generally prevailing rate of production during said period before January 31, 1952, was an average of 1.83 head of cattle or hogs per hour per employee employed as a "knife man" on the killing floor of the plaintiff's plant. A knife man is one who is employed in certain of the classifications described in Exhibit A under the heading "Killing"; and the duties of said knife men include, among other things, the use by such men of a knife in performing the duties required of them under Exhibit A. Immediately after January 31, 1952, and continuously since that date except for the months of May, June, July and August, of 1952, when the de-

fendant caused a partial lifting of the controlled kill, proximately by reason of the said meetings, conferences, directions and instructions and as a [5] direct and natural result thereof and in violation by the defendant of Exhibit A, the said rate of production per hour per knife man as aforesaid immediately decreased substantially below the previous average of 1.83. The average rate for the period from February 1, 1952, through April 30, 1954, was 1.42, resulting in a decrease of .41.

VIII.

The plaintiff continuously since January 31, 1952, and to date has requested and demanded of the defendant through its duly elected, authorized and acting executive secretary, its several duly elected, authorized and acting business representatives, its duly elected, authorized and acting president, its duly elected, authorized and acting stewards employed by the plaintiff, and through the defendant's various members employed by plaintiff under and pursuant to Exhibit A, that the defendant revoke, cancel, rescind or withdraw its instructions and directions which have been continuously since that date and are now causing the employees of the plaintiff to reduce their rate of production as aforesaid. The defendant through its agents have failed and refused and continue to fail and refuse to comply with said requests or demands of the plaintiff or in any other way to cause or request the employees of the plaintiff to resume the rate of production maintained by said employees prior to

January 31, 1952, or any rate other than the controlled kill rate.

IX.

The said directions and instructions of the defendant were and are in direct violation of the terms, conditions and covenants of Exhibit A, and particularly but without being limited to the express and implied provisions thereof which prohibit strikes. As a direct and natural result of said breach of contract, plaintiff was required to pay and did pay for its general, administrative and direct and indirect labor costs and expenses allocable only to the production and sale of beef and not of hogs or the products processed therefrom (with only a few exceptions) the same amount of money to [6] operate the plant with controlled kill as it would have paid without it. Except for those few items of general, administrative and direct and indirect labor costs and expenses which were less than the sums which the plaintiff would have been required to pay had there been no breach of contract, a proportion of all of the other said sums so paid by the plaintiff equal to the proportion which the decrease in the average rate of production under controlled kill bears to the average rate with normal production, that is, .41 to 1.83, or 22.4%, was and is a direct loss to the plaintiff. The total of such general, administrative and direct and indirect labor costs and expenses, excluding those which would have been higher if there had been normal production and including only those allocable to the production and sale of beef and not of hogs or the

products procured therefrom, which the plaintiff paid during the period from January 1, 1952, through April 30, 1954, was $2,387,317.87. The total loss, therefore, sustained by the plaintiff as a direct and natural result of the defendant's breach of contract as aforesaid through April 30, 1954, was and is 22.7% of $2,387,317.87 or $534,759.20. Defendant as aforesaid has continued to violate the contract as aforesaid, and plaintiff at the time of trial will request leave of court to amend these pleadings and proceedings in order to insert the additional damages which will be incurred by the plaintiff from and after April 30, 1954, as a direct and natural result of the defendant's continued breach of contract.

Wherefore, plaintiff prays for judgment against the defendant as follows:

1. For the sum of $534,759.20 damages and for such further sums as damages as may be incurred from and after April 30, 1954, to the date of trial;

2. For interest at the rate of 7% per annum on the damages computed reasonably so as to compensate the plaintiff for its loss as incurred week by week from February 1, 1952, to the date of [7] judgment; and

3. For such other and further relief as to the court may seem proper.

/s/ MILTON S. TYRE,
Attorney for Plaintiff. [8]

EXHIBIT A

This Agreement, made and entered into this 24th day of January, 1951, by and between Meat Packers Incorporated, hereinafter referred to as the Employer, and the Butchers Union, Local No. 563 of the Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., affiliated with the Western Federation of Butchers of California, hereinafter referred to as the Union:

Witnesseth

Article I.

Recognition of the Union:

1. The Employer recognizes the Union as the representative for purposes of collective bargaining as to wages, hours and working conditions on behalf of all production workers except Operating Engineers, Teamsters, Office and Clerical Workers, non-working Foremen, and any and all supervisory employees who do not perform any duties covered by this Agreement.

2. It is mutally agreed that only employees doing work that comes under the jurisdiction of the Butchers Union, Local No. 563, A. F. of L., shall be allowed to perform work as provided for in this Agreement.

3. The Company shall have the right to hire any person as a new employee. Every new employee shall be a temporary employee for a period of

Exhibit A—(Continued)

thirty (30) days from the date he first reports for work and the continued employment of said employee shall be at the exclusive discretion of the Employer during the trial period. Any new employee who shall be retained by the Company for more than such probationary period of thirty (30) days shall become and remain a member of the Union as a condition of employment.

4. The Employer agrees to notify the Union of new hire on the date of employment of the employee.

5. The Employer agrees to call the office of the Union and give consideration to those unemployed in the classifications involved in this Agreement, providing they meet the qualifications necessary for employment.

6. New employees shall draw regular Union wages during trial period. All extra employees after thirty (30) days of employment shall be classed as regular employees on the payroll.

7. The Employer agrees to prominently display the Union Shop Card at all times in one or more places. [9]

* * *

Article V.

Working Conditions

1. It is further mutually agreed that the Employer will furnish his employees with coats and

Exhibit A—(Continued)

luggers and such uniforms as may be required by the Employer and pay for the laundering of the same.

2. Two (2) rest periods shall be allowed without deduction of pay, at regular times in each shift to be mutually agreed upon by the Employer and the Union, a.m., fifteen (15) minutes, p.m., ten (10) minutes.

3. A regular starting time shall be established by the Employer for each shift and plant operation in each individual plant, such schedule shall be properly posted and a copy mailed to the Union.

4. When employees are requested to report for work on Saturdays, Sundays or Holidays, they shall be guaranteed a minimum of four (4) hours' work in their department.

5. Employees properly reporting for work and kept waiting a period of time before starting to work shall be paid their regular scale for such waiting period.

6. Employees reporting late shall be permitted to start work on the next quarter (¼) hour period. Employees reporting late for work any day during their regular guaranteed work week shall forfeit their guarantee for the day they report late for work and shall be paid for only the hours actually worked on that day.

7. Employees required to work more than five (5) hours without time off for lunch, shall be paid

Exhibit A—(Continued)

time and one-half (1½) for all time worked over the five (5) hour period until a lunch period is given.

8. An employee temporarily working in a higher classification shall be paid the rate of the highest classification for the time actually worked on such classification.

9. An employee regularly working in two (2) or more classifications during a work week shall have his rate established at the rate for the highest classification so worked.

10. Employees shall be allowed time off without pay for official business for the Union, provided reasonable advance notice is given and further provided that the total of such time off shall not exceed thirty (30) days, unless prearranged between management and Union representatives.

11. In the event that any jobbing house or meat cutting or similar work shall be done, then that work shall be classified as such and the employees paid the prevailing rate for the area. This does not apply to classifications now listed in the present Agreement.

12. In the event that there are new jobs or classifications created they shall be subject to negotiations.

13. When employees are temporarily transferred from one department to another, said employee

Exhibit A—(Continued)

shall not work more than gang time of his regular department. [10]

* * *

Article VII.

Disputes, Grievance, Union Representation Thereof

1. No employee shall be discriminated against by reason of his activities in, or his representation of the Union.

2. No employee covered by this Agreement shall be suspended, dismissed, demoted or disciplined without just and sufficient cause, Any employee claiming unjust suspension, dismissal, demotion or disciplining shall make his claim to the Union within three (3) days of the action by the Employer, otherwise no action shall be taken by the Union. Upon receipt of the employee's claim, the Union shall inform the Employer, and grievance procedure shall be instituted promptly. If it is found that an employee has been improperly disciplined, dismissed, demoted or suspended, the employee shall be reinstated without loss of rights or standing of any kind, and he shall receive his full wages for period in question.

3. In the event of a dispute arising in the case of contagious diseases, the City Health Officer of Los Angeles, California, shall be the final authority in determining the physical fitness of the employee.

4. In order that the Union may be aware of members violating rules, and be given an opportu-

Exhibit A—(Continued)

nity to help correct violations and aid in maintaining maximum efficiency, it is agreed that where the Employer finds it necessary to reprimand an employee, which may have serious results, the Employer shall reduce such reprimand to writing in triplicate, giving one copy to said employee, one to be mailed to the Union immediately, and one to be retained in the Employer's files.

5. Upon any instances of bad workmanship, misconduct, failure to follow instructions, or any breach of discipline, which cannot be handled informally, the management may then serve first and second written notices upon the individual in cases where immediate disciplinary action is not contemplated. Disciplinary notices shall be void after ninety (90) days, except in case of repetition of same [11] violation.

6. Upon the issuance of a third notice, or in a situation where immediate disciplinary action is contemplated, the management may request the employee to report to the office where the employee shall state in writing if a hearing is desired and shall thereupon leave the premises in an orderly fashion and without delay. If a hearing is not requested by the employee, nor by the Union within 24 hours, the employee, in case discharge is the penalty, shall have no further rights under this Agreement.

7. Any shop committee or other accredited representative of the Union shall have free approach to

Exhibit A—(Continued)

the Employer on all matters of common interest between the employees and the Employer arising out of their employment.

8. A duly authorized Union business representative shall be allowed free access to the employees during working hours. Such representative shall carry credentials to be displayed upon the request of the Employer. The Union agrees that such representative shall avoid visits during rush hours where possible, and shall not interfere unreasonably with production.

9. All disputed claims for overtime shall be regulated so that no injustice shall be done the Employer or employee. The Employer shall keep time cards, or time clock records relating to employees covered by this Agreement for checking of overtime, such records shall be made available to the Business Agent or authorized representative of the Union in case of dispute. Where no time clock is used, the Employer shall see to it that time card weekly records are signed by the Employee. It is agreed that the payroll records of the Employer relating to employees covered by this Agreement shall be made available for inspection to the authorized representative of the Union upon request.

10. The Employer agrees that immediately upon request he will furnish the Union with a list of all employees coming under the jurisdiction of this [12] Agreement.

* * *

Exhibit A—(Continued)

Article X.

Work Week

1. It is agreed that forty (40) hours shall constitute the work week, except as hereinafter provided, eight (8) hours to be worked as follows: Monday, Tuesday, Wednesday, Thursday and Friday or Sunday night through Thursday night, inclusive. Staggered shifts will be allowed for corral men.

2a. The guaranteed work week shall be forty (40) hours Monday through Friday, inclusive.

2b. Employees laid off and called back to work the week immediately following the week of the layoff shall be guaranteed their full week's pay. If employees are called back the second week or later, they shall be guaranteed pay for the day they are called back and the balance of the days in that week.

3. Overtime hours shall not be used in computing the guaranteed work week.

4. There shall be no split shifts.

5. Work on Saturdays, Sundays or Holidays shall not be permitted except in the case of emergency, such work shall be voluntary. Employees should be notified not later than Thursday if [13] possible.

Exhibit A—(Continued)

Article XI.

Wages

Section 1

1. All extra employees shall be guaranteed an eight (8) hour day, and ten cents (.10c) per hour over the prevailing rates of the contract for regular employees. Overtime shall start at the end of the eighth hour worked in any one day. Extra employees working any part of their day between the hours of 6 p.m. and 6 a.m. shall be governed by the regular clause covering such hours.

2. All employees working any portion of his or (her) regular shift between the hours of 6 p.m. and 6 a.m. shall be paid ten cents (.10c) per hour above their regular rate of pay.

3. Casual night employees will be paid ten cents (.10c) per hour above the regular rate on a daily basis.

4. Overtime at the rate of time and one-half (1½) shall be paid after eight (8) hours in any one day, and after forty (40) hours in any one week. All overtime shall be voluntary.

5. Time and one-half (1½) shall be paid for all work performed on Saturday.

6. Double time shall be paid for all work performed on Sundays.

Exhibit A—(Continued)

7. Pay check stubs shall show rate of pay, straight time and overtime hours worked, and deductions.

Section 2

See page 8 for wage rates.

Article XII.

Arbitration

1. Under the terms of this Agreement there shall be no cessation of work either by strikes or lockouts, and any and all grievances that cannot be amicably adjusted between the Union Representative and the Employer shall be referred to an impartial board for arbitration. The Arbitration Board shall consist of two (2) selected by the Employer, two (2) by the Union, and one (1) Impartial Chairman to be agreed upon between those representing the Employer and the Union. In the event of failure to agree upon an impartial chairman within a single meeting of the parties, he shall be selected by the American Arbitration Association submitting the names of seven (7) available Arbitrators of which the Employer and the Union shall each eliminate three (3).

2. The findings of the Arbitration Board shall be final and binding upon both the Union and the Employer and neither shall attempt to evade putting such findings into effect promptly.

Exhibit A—(Continued)

3. The Company and the Union shall share equally the expense of the impartial arbiter. A decision must be rendered within fifteen (15) days from time of submission unless otherwise mutually agreed to by the Employer and the Union.

4. In the event arbitration is requested by either party in writing, said arbitration arrangements shall be made and submitted to the Arbiter within thirty (30) days from date of written notice. [14]

* * *

Article XIV.

1. No member shall be unfavorably affected in wages or conditions by the adoption of this Agreement. Members working by the week, as well as those securing more than the scale, shall receive all benefits of this Agreement.

* * *

Article XVI.

Termination

1. Except as listed below, this Agreement shall take effect March 1, 1951, and continue in effect until March 1, 1956, and from year to year thereafter unless terminated by either party giving written notice of termination by registered mail to the other not less than sixty (60) days prior to March 1, 1956, and/or March 1 of any year thereafter .

2. This Agreement may be opened annually for

Exhibit A—(Continued)

negotiations of weekly rates of pay and hours only, by either party giving notice to the other party not less than sixty (60) days prior to March 1, of any year. If either party opens this Agreement for adjustments, the provisions herein shall continue in full force and effect until the new Agreement is signed which shall become effective as of the anniversary date.

Signed for the Union:

[Seal] /s/ R. S. GRAHAM.

Signed for the Employer:

MEAT PACKERS
INCORPORATED. [18]

Date: January 24th, 1951.

Letter of Understanding for 1951-1956 Agreement

In the event that the Labor Management Relations Act of 1947 is amended, modified, or repealed so as to permit the incorporation herein of provisions contained in Article I, Sections 2, 4, 5, and 6 of the Agreement between the parties dated March 1, 1946, to March 1, 1951, and such is otherwise proper under the law, said provision shall be automatically incorporated herein at such time as the law permits.

Exhibit A—(Continued)

Signed for the Union:

[Seal] /s/ R. S. GRAHAM.

Signed for the Employer:

MEAT PACKERS
INCORPORATED,

/s/ BOB CAMPLER,
Pres.

Duly verified.

[Endorsed]: Filed June 2, 1954. [19]

[Title of District Court and Cause.]

MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO STAY ALL PROCEEDINGS PENDING ARBITRATION

To the Plaintiff and its Counsel:

Please Take Notice that on July 19, 1954, at the hour of 10:00 o'clock a.m., the defendant will move the above-entitled Court to dismiss the above cause on the ground that the complaint does not state a claim or cause of action, or, in the alternative, the defendant will move the Court to stay all further proceedings herein until arbitration is had.

This motion is based upon the complaint herein and the points and authorities attached hereto.

Dated: June 8, 1954.

/s/ DAVID SOKOL,
Attorney for Defendant. [21]

Points and Authorities

I.

The Complaint Does Not State a Cause of Action.

The complaint on its face shows that there is a collective bargaining agreement between the parties. The agreement does not give exclusive authority to the employer as to the amount of the work to be done by each employee. Furthermore, from the face of the complaint, it appears that the employer has acquiesced in the alleged practices for almost two years; it has not discharged any employees for allegedly failing to perform their tasks; and does not allege that the Union, its representatives and members, did not have the right, under the collective bargaining agreement, to do what it is alleged they did do.

II.

The Court, Pursuant to Sec. 3 of Title 9, of the United States Code Entitled "Arbitration," Should Stay All Further Proceedings.

Sec. 3 provides as follows.

"Stay of proceedings where issue therein referable to arbitration.

"If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing

for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." [22]

The plaintiff brought this action under Sec. 301 of the Taft-Hartley Act against the defendant Union for damages and breach of contract. The breach allegedly is a cutting down of work by the employee members of the Union. The agreement contains an arbitration clause in Article XII.

Section 3 of Title 9 is applicable to a collective bargaining agreement between the parties such as is involved herein. Tenney Engineering vs. United Electrical Workers, 207 F. (2d) 450.

Accordingly, under Sec. 3 of Title 9, the Court, upon being satisfied that the issue involved is referable to arbitration, should stay further proceedings.

If the contention of the plaintiff is as alleged in the complaint, the matter is one for arbitration, in view of the fact that a dispute has arisen between the parties as to how much work the plaintiff's employees should do. This is clearly a grievance subject to the arbitration machinery.

However, since the plaintiff has not alleged any

attempt to arbitrate this matter, the cause should be dismissed.

Respectfully submitted,

/s/ DAVID SOKOL,
Attorney for Defendant.

[Endorsed]: Filed June 9, 1954. [23]

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

This is an action brought by the employer for damages for breach of a collective bargaining contract. Plaintiff, a meat packing concern, sues the labor union representing the company's employees. The suit is brought pursuant to provisions of Section 301 of the Labor-Management Relations Act of 1947 (Title 29, U.S.C.A., § 185). The Company alleges that the Union has breached the contract by issuing directives and instructions to the employees to engage in an organized reduction of output which has caused substantial losses to the Company.

The Union now moves to dismiss the action or, in the alternative, to stay all proceedings pending arbitration. [25]

The motion to dismiss is based on three grounds. (1) That the agreement does not give exclusive authority to the employer as to the amount of work to be done by each employee; (2) that it appears from the complaint that the employer has acquiesced in

the alleged practices for almost two years, not having discharged any employees for failing to perform their tasks; and (3) that the complaint does not allege that the Union did not have the right, under the contract, to do the acts allegedly breaching the contract.

Upon consideration of the memoranda submitted and the oral arguments presented, the motion to dismiss is denied.

The motion to stay all proceedings pending arbitration is expressly submitted pursuant to Title 9 of the United States Code. Section 3 of that Title provides for a stay of any suit or proceeding upon an issue which is, by terms of a written agreement, referable to arbitration. Without deciding whether or not the issue involved in this action is, under the terms of the contract, an issue referable to arbitration, it is the opinion of the Court that the Arbitration Act specifically excludes the contract involved in this action.

The Arbitration Act was passed as a single unit. (Act February 12, 1925, c. 213, 43 Stat. 883). Section 1 of the Act, after defining certain words, states:

> "* * * nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

It is the Company's contention that this clause removes the contract involved in this action from the Act. The Union [26] contends (a) That the phrase

"contracts of employment" does not cover collective bargaining agreements; and (b) that the employees involved in this contract are not a "class of workers engaged in interstate commerce."

On consideration of the Act in its entirety and examination of its legislative history,[1] and in view of the obvious purpose and intent of other subsequent labor legislation,[2] it is the opinion of the Court that the contract here involved is within the exception clause of the Arbitration Act and, therefore, the Act is inapplicable to the matter at bar. Gatliff Coal Co. vs. Cox, 142 F. 2d 876 (6th, 1944); International Union vs. Colonial Hardwood Floor Co., 168 F. 2d 33 (4th, 1948); Mercury Oil Refining Co. vs. Oil Workers International Union, CIO, 187 F. 2d 980 (10th, 1951).

Counsel for plaintiff shall submit an order of denial of the motion to dismiss or stay proceedings.

Dated: August 6, 1954.

/s/ ERNEST A. TOLIN,
United States District Judge.

[Endorsed]: Filed August 6, 1954. [27]

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[1]XLVI A.B.A. Rep. 359 (1921); XVIII A.B.A. Rep. 287 (1923); Gordon, International Aspects of Trade Arbitration, 11 A.B.A.J. 717 (1925); 28 N.C. Law Rev. 225, 227 (1950).

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[2]e.g. Railway Labor Act, Title 45 U.S.C.A. § 157; 29 U.S.C.A. § 108.

In the District Court of the United States, Southern District of California, Central Division

No. 16818-T

COMMERCIAL PACKING CO., INC.,

Plaintiff,

vs.

BUTCHERS UNION LOCAL 563, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor,

Defendant.

ORDER

This cause came on to be heard on the Motions of defendant to dismiss the Complaint herein and in the alternative to stay these proceedings pending arbitration, and it appearing to the court that these motions should be denied, it is

Ordered, that the defendant's Motion to Dismiss be, and it is hereby, denied;

It Is Further Ordered, that the defendant's Motion to Stay these Proceedings Pending Arbitration be, and it is hereby, denied.

The defendant shall have fifteen (15) days within which to file its answer to the Complaint herein.

Dated: August 16, 1954.

/s/ ERNEST A. TOLIN,
United States District Judge.

Approved as to Form:

DAVID SOKOL,

By /s/ FRED ROTHFARD,
Attorney for Defendant.

Lodged August 13. 1954.

[Endorsed]: Filed August 17, 1954. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, to the Plaintiff Above Named, and to its Attorney, Milton S. Tyre, Esq.:

Notice is hereby given that the defendant in the above-entitled action hereby appeals to the Circuit Court for the 9th Circuit from the Order of the above-entitled Court entered the 17th day of August, 1954, herein, denying defendant's Motion to stay these proceedings pending arbitration.

Dated: August 20, 1954.

/s/ DAVID SOKOL,
Attorney for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed August 23, 1954. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 32, inclusive, contain the original Complaint; Motion to Dismiss or in the Alternative to Stay all Proceedings Pending Arbitration; Memorandum of Decision; Order; Notice of Appeal; Statement of Points and Designation of Record on Appeal which constitute the transcript of record on Appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 3rd day of September, A.D. 1954.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy. [30]

[Endorsed]: No. 14,502. United States Court of Appeals for the Ninth Circuit. Butchers Union Local No. 563, Affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor, Appellant, vs. Commercial Packing Company, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 7, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit
No. 14502

BUTCHERS UNION LOCAL 563, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor,

Appellant,

vs.

COMMERCIAL PACKING CO., INC.,

Appellee.

APPELLANT'S STATEMENT OF POINTS

To the Clerk of the Above-Entitled Court, to the Appellee Above Named, and to Milton S. Tyre, Esquire, its Attorney:

The following is the concise Statement of Points upon which Appellant intends to rely on the appeal herein:

I.

The trial Court erred in denying Appellant's Motion to Stay the Proceedings pending arbitration.

II.

The trial Court erred in ruling that the contract involved herein is within the exception clause of the Arbitration Act, and that therefore the Act was inapplicable to the matter at bar.

Dated: September 8th, 1954.

/s/ DAVID SOKOL,
Attorney for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 9, 1954.